

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1152764 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: Henry E. SCHULTZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1632

Henry E. SCHULTZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 code of Federal Regulations 137.30-1.

By order dated 8 July 1966, an Examiner of the United States Coast Guard at New York, N.Y. suspended Appellant's seaman's documents for 12 months outright plus 6 months on 18 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an ordinary seaman on board the United States SS SAPHIRE GLADYS under authority of the document above described, on or about 14 June 1966, Appellant wrongfully assaulted and battered a fellow crewmember, James W. Duffy, with a milk can and a coffee cut on board the vessel at Bremerhaven, Germany.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of several witnesses.

Appellant offered no defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of 12 months outright plus 6 months on 18 months' probation.

The entire decision was served on 12 July 1966. Appeal was timely filed on 1 August 1966.

FINDINGS OF FACT

On 14 June 1966, Appellant was serving as an ordinary seaman on board the United States SS SAPHIRE GLADYS and acting under authority of his document while the ship was in the port of Bremerhaven, Germany.

At about 0200 on that date, after having been slapped by James

V. Duffy, ship's electrician in the crew messroom, Appellant hit Duffy with a milk can and with a coffee cup. Duffy was knocked to the deck and was severely cut about the face.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant acted in legitimate self-defense.

APPEARANCE: Standard, Weisberg & Harolds, of New York, N.Y.

OPINION

The record leaves no doubt that Duffy was the original physical aggressor in this case, but there is also no doubt that after the "slapping" testified to by witnesses there was no justification for the two retaliatory strikings by Appellant with a can and a coffee cup.

The extent of Duffy's injuries does not appear in the record but it was shown that he was knocked to the deck, bleeding profusely, and that he was hospitalized.

The Examiner found that Appellant had a prior record of an admonition on 12 May 1966 for failure to obey an order. There is no support for this finding in the record. Although the error is cured by Appellant's admission on appeal that he was so admonished, the Examiner clearly followed an improper procedure. For this reason, the outright suspension is appropriately reduced.

ORDER

The order of the Examiner dated at New York, N.Y. on 8 July 1966, is MODIFIED to provide for a suspension of nine months, plus six months on eighteen months probation, and, as MODIFIED, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 5th day of June 1966.

INDEX

Assault (including battery)

retaliation

self-defense, not shown

Prior Record

error cured by admission on appeal

not ascertained on the record, error